

SUBJECT: Requiring decommissioning provisions in solar power facility agreements

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P.  
King, Metcalf, Shaheen, Slawson, Smithee

0 nays

2 absent — Lucio, Raymond

SENATE VOTE: On final passage, April 14 — 31-0

WITNESSES: For — Charlie Hemmeline, Texas Solar Power Association; (*Registered, but did not testify*: Carrie Simmons, Conservative Texans for Energy Innovation; Cyrus Reed, Lone Star Chapter Sierra Club; Brent Bennett, Texas Public Policy Foundation; Kenneth Flippin, US Green Building Council Texas Chapter; Michael Belsick; Thomas Parkinson)

Against — None

DIGEST: CSSB 2845 would establish requirements for solar power facility agreements, including provisions related to decommissioning and financial assurance.

A solar power facility agreement would mean a lease agreement between a grantee and a landowner that authorized the grantee to operate a solar power facility on the leased property, where a grantee was a person, other than an electric utility, who operated a solar power facility on property leased from a landowner.

A solar power facility would include a solar energy device and a facility or equipment, other than that owned by an electric utility, used to support the operation of a solar energy device, including an underground or aboveground electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility,

telecommunications equipment, a road, a meteorological tower, or a maintenance yard.

**Applicability.** The bill would apply only to a solar power facility that was a generation asset.

**Required agreement provisions on facility removal.** The bill would require a solar power facility agreement to provide that the grantee was responsible for removing solar power facilities from the landowner's property. The agreement would have to provide that the grantee would safely clear, clean, and remove:

- each solar energy device, transformer, and substation and its foundation from the ground to a depth of at least three feet below the surface grade of the land on which it was installed;
- each installed overhead power or communications line; and
- each buried cable installed in the ground to a depth of at least three feet below the surface grade of the land in which it was installed.

The agreement would have to provide that, at the request of the landowner, the grantee would clear, clean, and remove each road constructed on the property. If reasonable, the agreement also would have to provide that the grantee, at the request of the landowner, would remove all rocks over 12 inches in diameter excavated during the decommissioning process, return the property to a tillable state using certain methods, and return the surface as near as possible to the same condition as before the grantee dug holes, including by reseeded pastureland with native grasses prescribed by an appropriate governmental agency.

The landowner would have to make a request within 180 days of the date the solar power facility was no longer capable of generating electricity in commercial quantities or the date the landowner received written notice of intent to decommission the facility from the grantee.

For the removal of a solar energy device, transformer, or substation

foundation, buried cable, road, or excavated rocks, the agreement would have to ensure that each hole or cavity created by the removal was filled with soil of the same type or a similar type as the predominant soil found on the property.

**Required agreement provisions on financial assurance.** A solar power facility agreement would have to provide that the grantee would obtain and deliver to the landowner evidence of financial assurance that conformed to certain requirements to secure the grantee's obligation to remove the solar power facilities. Acceptable forms of financial assurance would include a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency, a letter of credit, a bond, or another form of financial assurance reasonably acceptable to the landowner.

The amount of the financial assurance would have to be at least equal to the estimated amount by which the cost of removing the solar power facilities and restoring the property exceeded the salvage value of the facilities, less any portion of the value of the solar power facilities pledged to secure outstanding debt.

The agreement would have to provide that:

- the grantee was responsible for ensuring that the amount of the financial assurance remained sufficient to cover the amount required by and consistent with estimates under the bill;
- the estimated cost of removing the facilities and restoring the property and the estimated salvage value would be determined by an independent, third-party licensed professional engineer; and
- the grantee would deliver an updated estimate, prepared by an engineer, on or before the 10th anniversary of the commercial operations date of the facilities and at least once every five years after the commercial operations date of the facilities for the remainder of the term of the agreement.

The agreement also would have to provide that the grantee would deliver

the financial assurance no later than the earlier of the date the facility agreement was terminated or the 20th anniversary of the commercial operations date of the facilities on the property. The commercial operations date would be the date when the solar power facilities were approved for participation in market operations by a regional transmission organization and would not include the generation of electrical energy or other operations conducted before that date.

The grantee would be responsible for the costs of obtaining financial assurance and determining the estimated removal costs and salvage value.

The grantee could not cancel financial assurance before completing the obligation to remove the solar power facilities unless the grantee provided the landowner with replacement financial assurance at the time of or before the cancellation.

In the event of a transfer of power facility ownership, the financial security provided by the grantee would remain in place until evidence of financial security was provided to the landowner.

**Waiver void.** A provision of a solar power facility agreement that purported to waive a right or exempt a grantee from a liability or duty established by the bill would be void.

A person who was harmed by a violation of the bill would be entitled to appropriate injunctive relief to prevent further violation. Remedies provided under the bill would be in addition to any other procedures or remedies provided by other law.

The bill would take effect September 1, 2021, and would apply only to a solar power facility agreement entered into on or after that date.

SUPPORTERS  
SAY:

CSSB 760 would extend existing decommissioning requirements to solar power facilities to maintain a predictable regulatory climate and protect the environment by ensuring waste was disposed of properly.

Current law requires oil, gas, coal, and wind energy companies to pay to decommission and properly dispose of equipment that will no longer be used when the parts have worn out or the project has been completed. Energy companies are required to pay for most of the environmental costs of producing energy, and the bill simply would ensure that solar power facilities were treated similarly.

The bill would reflect industry best practices by requiring solar power facility agreements to ensure that project owners cleared, cleaned, and removed all traces of the project upon decommissioning and returned the land to its pre-project state. CSSB 760 would ensure that solar power projects were properly decommissioned at the end of their useful lives at the owner's expense by requiring the agreement to include financial assurance securing an owner's obligations to remove the facilities. This requirement would give landowners, communities, and other entities further assurance that if these facilities were abandoned or the company went bankrupt, taxpayers would not carry the financial burden.

The bill also would protect the environment by putting protections in place prior to the decommissioning of any future solar power facilities. This is particularly important as most solar equipment cannot be recycled and can leach toxic chemicals into the environment if not disposed of properly. Since Texas is one of the top solar-producing states, a large portion of the waste burden resulting from decommissioned solar power facilities could fall on the state if not otherwise provided for.

CRITICS  
SAY:

No concerns identified.